COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Notice of Inquiry/Rulemaking on Electric Industry Restructuring	)	D.P.U. 96-100

Comments of the Competitive Power Coalition of New England

The Competitive Power Coalition of New England ("CPC") is a New England-wide organization of independent power producers, cogenerators and power marketers. CPC is pleased to offer these comments in response to the restructuring plans filed with the Department of Public Utilities ("Department") by Boston Edison Company ("BECo"), Eastern Edison Company ("EECo"), Massachusetts Electric Company ("MECo"), Western Massachusetts Electric Company ("WMECo") and the Massachusetts Division of Energy Resources ("DOER").

CPC has participated actively in Department proceedings, industry roundtable discussions, and numerous other fora addressing the possibilities and potential difficulties associated with restructuring the electric industry. CPC has long advocated a fully competitive market as the only means of assuring lower prices for electricity and customer access to a variety of electric service options. CPC also has noted, however, that absent careful attention to wholesale and retail market structures, the difficult process of industry restructuring risks culminating in a marketplace where barriers to entry lock out the new competitors necessary to drive prices lower and to introduce innovative services. Appropriate market structures are critical to ensure that restructuring does not replace today's regulated monopoly utilities with tomorrow's unregulated monopolies.

Thus, in preparing these comments CPC focuses on the elements of retail and wholesale market structure necessary to

establish the conditions for full and fair competition. Specifically, a competitive market structure ultimately depends upon: stranded cost calculation and recovery mechanisms that do not favor any market participant; a comprehensively unbundled corporate structure for existing utilities; non-discriminatory, open access to transmission; full and equal access to consumers; and parity of environmental requirements for all suppliers.

Stranded Cost Calculation and Recovery

CPC continues to support the opportunity for utilities to recover net, nonmitigatable, strandable costs arising from investments made before utilities were fully on notice that they would be moving into a competitive marketplace.[1] CPC's support for utility recovery of appropriate stranded costs is premised entirely, however, on the implementation of a fully competitive market structure. Utilities must be subject to the same competitive pressures as non-utility market participants in order to reasonably expect ratepayer compensation for stranded costs. Simply put, uneconomic investment only becomes "stranded" when customers exercise their ability to choose another supplier of electricity. Full and fair competition at the wholesale and retail levels are necessary to provide the ability for customers to choose among a full range of alternative supply options.

Just as stranded cost recovery rightfully depends on moving to real competition, so, too, the transition to competition depends on stranded cost recovery mechanisms that do not favor any market participant. Careful attention must be given to possible anti-competitive effects of both the calculation and recovery mechanisms associated with stranded costs, as appropriately cautioned by the Department in its Restructuring

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[1] At the very latest, utilities clearly were on notice that they would be moving into a competitive marketplace by August of 1995, when the Department issued its electric industry restructuring order in D.P.U. 95-30 ("1995 Restructuring Order").

Order (see 1995 Restructuring Order at 37-38).

Unfortunately, the utility restructuring plans filed with the Department in February of 1996 fail to address these very legitimate concerns about the possible anti-competitive effects of stranded cost recovery. The most serious of these concerns are raised by (1) the utilities' proposed inclusion of going-forward costs among stranded costs, and (2) the utilities' failure to adjust their calculation of stranded costs to reflect the market value of existing generating units, mitigation of stranded costs, or imprudence.

The inclusion of any going-forward costs in a utility's calculation of its stranded costs stifles competition by requiring ratepayers to subsidize operating costs associated with utility-owned generation. Because of this ratepayer subsidy, utilities can charge prices for their own generation which are below the actual operating costs of the generating units. This provides a clear advantage over competing suppliers, who do not have access to any form of ratepayer subsidy.

Proposed going-forward costs that are of particular concern include BECo's proposed recovery of ongoing operation and maintenance costs independent of operation for its nuclear generation, as well as property taxes for its fossil-fired generation. Similarly, MECo includes ongoing nuclear operation and maintenance costs and natural gas demand charges among its proposed stranded costs. EECo does not include any costs associated with fossil-fired units in its stranded cost mechanism, but the company does include capital additions to its nuclear units until 1998. Finally, WMECo proposes to use revenues generated under its five-year "rate freeze" to enhance the competitive position of its generating units by accelerating depreciation of certain of those units and to implement environmental upgrades in order to comply with standards which must be met by competitors without any similar ratepayer subsidy.

The utilities' proposed inclusion of inappropriate going-

forward costs is compounded by their failure to include any downward adjustment to their calculation of stranded costs to reflect the market value of existing generating units, mitigation of potential stranded costs or imprudence of past decisions. Absent these adjustments, ratepayers are asked, in effect, to make a "gift" to the utility of the full cost of these units, without compensation for their economic value and without regard to the potential imprudence of previous investment decisions. Although the MECo plan does make a provision for crediting the stranded cost charge for all proceeds that are produced by sales of assets whose costs are recovered through that charge, this provision is, nonetheless, inadequate. First, ratepayers receive no benefit to reflect the market value of an existing generating unit should the utility decide to retain that unit. Further, it is unclear how ratepayers would be credited for the proceeds of the sale of a unit after the ten-year stranded cost recovery period.

The inflated calculation of stranded costs resulting from the methodologies proposed by the utilities undoubtedly will impede competition. As non-bypassable stranded cost charges inappropriately consume a larger portion of the total price for electricity in the future competitive market, this leaves a correspondingly smaller margin against which alternative suppliers can compete. This is of special concern in light of the standard offer components of the utilities' proposals.[2] Under these proposals, all customers are responsible for costs associated with utility-owned generating units which exceed legitimate stranded costs, while only those customers who choose the utilities' standard offer receive any benefit associated with the operation of those units.

CPC concurs with DOER that the most effective means of

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[2] Additional anti-competitive concerns associated with the standard offer proposals are identified later in these comments in the Customer Choice/Access to Consumers section.

addressing the anti-competitive concerns associated with stranded costs is to require a market test of utility generation assets, for purposes of stranded cost recovery. Specifically, DOER recommends three methods of market valuation: (1) auction of assets; (2) spin-off of assets to a new, separately owned company created by the utility; or (3) an independent appraisal process which results in separation of ownership of generation assets from transmission and distribution assets (DOER Plan at 40).

A market valuation of assets for purposes of stranded cost recovery has several important advantages over an administrative valuation through a regulatory proceeding. First, the market valuation provides a "real" test of the value of the assets, as opposed to an administratively determined or negotiated approximation of actual market value. Thus, the market test avoids much of the potential for utilities to game the results of asset valuation in order to procure a competitive advantage. Second, a market test avoids a contentious, protracted regulatory proceeding. The tremendous resources (financial and other) required to participate in such a proceeding likely would preclude many non-utility interests from participating fully, thereby increasing the risk that any regulatory evaluation will be driven by the utilities. Third, and perhaps most importantly, each of the market tests set forth by DOER results in separation of generation from transmission and distribution assets. The separation of ownership of generation, transmission and distribution clearly lays the soundest foundation for a truly competitive market structure. Such separation assures that utilities will not be able to use stranded cost recovery to undercut potential competitors by using stranded cost revenue to cover going-forward costs necessary to operate their own generating units. This separation of assets also assures that necessary monopoly distribution services are not inappropriately linked with competitive generation of supplies.

The Department has identified four categories of potential

stranded costs: (1) existing, utility-owned generation facilities; (2) future liabilities associated with nuclear decommissioning and radioactive waste disposal; (3) contractual commitments for purchased power; and (4) regulatory assets (1995 Restructuring Order at 32). Among these four categories, CPC concurs with DOER that market valuation is appropriate for existing utility-owned generation facilities; while a simple administrative review should be adequate to determine the value of regulatory assets; and nuclear decommissioning and waste removal costs should continue to be recovered by the distribution company.

However, because power purchase agreements ("PPAs") are fundamentally different from other potential stranded costs, PPAs require separate treatment. PPAs reflect the rights and obligations of both sellers and purchasers of power. Importantly, though, while PPAs entitle purchasers to obtain the power produced by a generating facility, this entitlement confers absolutely no ownership interest in the facilities that are subject to the PPAs. Certainly, a purchaser that fulfills its obligations under a PPA can attempt to resell the power under that agreement into the open market. However, the sale of the PPA itself, if even possible, would amount to much more than a mere resale of electricity. Rather, such a sale would transfer rights and responsibilities from the current purchaser to a third party. Such a transfer has profound implications for the delicate balance reflected in every PPA among critical factors including risk assessment, production cost expectations, and reliability commitments. It is fallacious to assume that one signatory to a PPA can simply be substituted for another without undermining the very basis for the original agreement. For these reasons, absent specific assignment clauses allowing the unilateral transfer of the purchaser's rights and obligations to a third party, any change in the signatory of a contract must be the result of voluntary agreement among all parties.

CPC fully supports voluntary, mutually beneficial agreements to amend existing PPAs in the context of comprehensive solutions for the transition to a competitive electricity market. Absent such voluntary agreements, there is wide recognition that legal precedent and sound public policy require that the terms and conditions of existing PPAs must continue to be honored. Without a voluntary agreement, an attempt simply to sell a PPA to a third party via an auction or to assign a PPA to a new corporate entity created in the spin-off of utility assets clearly would violate these terms and conditions. Accordingly, CPC suggests the following treatment of existing PPAs following the separation of utility generation, distribution and transmission assets.

- In order to honor the terms and conditions of the agreement, the PPA would be held by the monopoly distribution company, which retains the current franchise rights of the vertically integrated utility.

- Because the distribution company would not be in the business of acquiring electricity, other than possibly to serve Basic Service customers, the distribution company would sell any surplus power obtained through the PPA into the open market, either on a spot or long-term basis.

- To avoid potential conflicts of interest, the distribution company would be precluded from selling electricity to an affiliated company.

- To encourage the distribution company to get the best possible deal for the electricity sold, the distribution company would be allowed to retain a percentage of the above-market revenue from the sale through a performance-based ratemaking proceeding.

- The difference between the price paid by the distribution company for the electricity under the PPA and the market value of electricity would be determined on a periodic basis and reflected in the access charge for stranded cost recovery.

In addition to adhering to the legal and public policy mandates requiring that existing PPAs be honored, this approach provides real benefits for consumers. First, this approach provides a true market test for the value of electricity

purchased though the PPA over the life of the agreement, rather than relying on a projection of market prices, which is especially unlikely to be reliable in the later years of the PPA. In addition, this approach assures that consumers reap the benefits of PPAs whenever they reflect below-market prices for electricity.

In its proposal before the Department, DOER appropriately recognizes that, while a market test clearly is the best way to value existing utility resources for purposes of stranded cost recovery, some interim measure is necessary until the market valuation is complete (DOER Plan at 9). CPC agrees with DOER that an interim administrative estimate of stranded costs, to be adjusted to reflect actual revenues derived from the sale or spin-off of assets, is necessary. CPC further agrees that such an interim administrative estimate is unlikely to raise the same concerns identified with substituting an administrative determination for a market test, due to its short duration and adjustment to reflect real market values.

CPC firmly believes that a market test for valuing existing utility generating assets, with the treatment of PPAs described above, is the most effective means of achieving the Department's stated objective of providing an orderly and fair transition to a fully competitive electricity market.

Corporate Structure of Existing Utilities

The vertical integration of today's monopoly utilities presents an unacceptable barrier to real competition in the electric industry. A single corporate entity with a controlling interest in the production, transmission and distribution of electricity always will have a strong incentive to provide preferential treatment to its own functional units at the expense of potential competitors. This preferential treatment can force competitors to charge higher prices, limit potential service offerings, and even prevent their entry into the market

altogether. Thus, the complete separation of ownership of generation, transmission and distribution lays the firmest foundation for a truly competitive market structure.

While sound public policy dictates the need for full separation of ownership of generation and transmission assets, numerous concerns have been raised regarding both practical and legal hurdles to any form of mandated, involuntary divestiture. In light of these hurdles, both perceived and real, voluntary utility action is key to achieving complete separation. Encouraging this action requires a combination of strong incentives to promote separation and real disincentives to continuing to operate as a vertically integrated utility.

CPC supports the implementation of financial incentives to encourage separation of ownership of generation, transmission and distribution. For example, a utility's rate of return may appropriately be linked to its efforts to mitigate market power through such complete separation of ownership. Much thought has been given to ways of implementing this form of financial incentive by the parties to the California electric industry restructuring effort. CPC recommends that the Department draw upon these efforts, as appropriate, to develop strong, workable financial incentives to promote complete separation of ownership.

With regard to utilities that choose not to fully separate ownership of generation, transmission and distribution, numerous proposals have been made for establishing separate affiliates under a single corporate umbrella. Under these proposals, varying forms of regulatory oversight and economic incentives are used to limit the ability of the affiliates of the utility to favor one of its constituent parts over competitors or to otherwise use their remaining monopoly power to hinder competition. White these mechanisms, to a varying extent, may limit anti-competitive utility behavior, the only way to *eliminate* incentives to use monopoly functions to inhibit competition is to sever corporate ties among generation,

transmission and distribution. Thus, mechanisms for regulatory oversight of potentially anti-competitive behavior by non-divested utilities must be designed with great care and attention to detail. This form of pervasive regulatory oversight also should be designed to provide a real disincentive to continuing to operate as an integrated utility.[3]

Depending on the degree of separation adopted by a utility, the Department will need to apply different levels of oversight with respect to the business relationships between the component parts of the utility. For example, transactions between "functionally unbundled" entities separated only by corporate protocol clearly will require a different type of scrutiny than affiliated companies which have separate boards of directors but operate under one holding company. While the type of scrutiny may vary from one utility to another, however, in all instances regulatory oversight must be adequate to ensure that the vestiges of monopoly power are not used to the detriment of emerging competitors.

Thus, as part of this proceeding, CPC recommends that the Department investigate its authority under Sections 85 and 94B of Chapter 164 of the General Laws, as well as the standards of review employed by the Department in implementing these statutory provisions, to determine whether they are sufficient to address the many types of transactions that may take place in a restructured electric industry.

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[3] DOER has appropriately noted that "functional unbundling without divestiture is an invitation to endless disputes and an anemic market. Moreover, it would require more bureaucracy, not less" (DOER Plan at 25). Utilities that choose to retain a corporate structure which invites these disputes and requires extensive regulatory oversight should be financially responsible, through special assessments or other mechanisms, for the administrative costs and burdens they create.

Transmission Access

Virtually every transaction in a competitive electric marketplace will rely on the transmission network to move electricity from the point of production to the point of consumption. Presently, ownership and control of the transmission network ultimately reside with vertically integrated utilities that have an ownership interest in generation as well as franchise rights to monopoly distribution services. The inherent potential for discrimination by any entity that competes with other generators while controlling the transmission network presents a significant threat to real competition in the electric industry.

All parties can agree that non-discriminatory, open access transmission is central to a competitive marketplace. The difficulty arises, however, in defining a market structure that actually achieves this objective. Among the proposals being considered, the creation of an independent system operator ("ISO") that has no relationship with any market participant is without a doubt the most straight-forward means of assuring that the transmission network operates without preference for certain participants at the expense of others. Thus, CPC advocates the creation of an ISO that separates the operation of the transmission network from its commercial interests. (A comprehensive description of the appropriate structure and function of the ISO is included in CPC's *Blueprint for a Competitive Electricity Supply System in New England*. A copy of the *Blueprint* is attached to these comments as Appendix A).

While CPC's *Blueprint* presents a comprehensive framework for a restructured electric industry, the utility-sponsored "NEPOOL Plus" plan offers only minor, incremental changes to the organization and operation of NEPOOL. "NEPOOL Plus", which is endorsed in each of the February 16, 1996 utility filings, does little to advance the Department's vision of competition and actually may operate to delay the implementation of meaningful

customer choice.

The problems with "NEPOOL Plus" are extensive -- problems which advocates for real competition expect to address at FERC. For purposes of this proceeding, however, CPC focuses on four areas where "NEPOOL Plus" fails to advance the Department's industry restructuring objectives.

(1) Timing: Any proposal to accommodate industry restructuring necessarily must be evaluated in terms of its ability to be implemented consistent with regulatory timetables for restructuring. On its face, "NEPOOL Plus" fails to achieve the restructuring timetables set out by both the Department and DOER.

Step 1 of "NEPOOL Plus" is scheduled for early 1996. As of this date, the amendments necessary to allow for this very small step have yet to be filed with FERC. Of greater significance, the implementation date for Step 2 of "NEPOOL Plus" has yet to be determined. Even if Step 2 of "NEPOOL Plus" included all the elements necessary to allow for real competition in the electric industry -- which it decidedly does not -- the lack of a firm date for implementation raises a "red flag" as to the ability of the "NEPOOL Plus" plan to achieve the Department's ambitious goals for industry restructuring.

(2) Independent System Operator: In a restructured industry, the creation of an ISO is critical to maintaining the integrity of the regional electricity supply system. While the "NEPOOL Plus" proposal states that NEPEX will act as an ISO, there is nothing in the NEPOOL proposal that supports the view that NEPEX will be able to act independently of the current NEPOOL participants.

The February 16, 1996 utility filings also mistakenly characterize NEPEX as an ISO under the "NEPOOL Plus" plan. In his pre-filed testimony, Mr. Frank P. Sabatino of WMECo states:

> "Finally, in Step 1 the pool will establish detailed criteria for the pool to function as an independent system operator. The goal is for New England's

> dispatch center, NEPEX, to function independently, while maintaining reliability and facilitating market transactions, guided by policies established by the members."

(Sabatino testimony at 18-19). On the most basic of levels, as long as NEPEX's functions remain even remotely linked to members' "policies", NEPEX would be incapable of acting as a true ISO. Only an entity that is truly independent of the commercial market can fulfill the role of ISO and ensure that system stability and reliability remain the primary objectives of NEPOOL.

(3) Central Dispatch - While NEPOOL should remain a single control area for reliability purposes, it is CPC's view that it is unnecessary to attempt to secure economic efficiency through continued employment of a system of centralized dispatch of all generating units. As discussed more fully in CPC's *Blueprint*, in a restructured industry market participants will nominate transactions to the ISO in a manner which reflects each participant's commercial interests for dispatching generation and load. The ISO, in turn, will schedule these transactions so that system reliability is not compromised. Such an approach will provide discipline to the market while allowing for additional market products and players. Through its continued allegiance to central dispatch, "NEPOOL Plus" fails to support a fully competitive commercial market.

(4) Governance - Currently, decisionmaking power in NEPOOL rests with load servers, i.e., franchise-serving vertically-integrated utilities. While the "NEPOOL Plus" proposal offers voting power to a wider range of market participants, the "NEPOOL Plus" proposal fails to address a far more basic question: Is any form of "governance" necessary in a NEPOOL where the ISO is completely separated from financial interests?

While CPC recognizes that today's NEPOOL has evolved from a long history of commitments among its various members, those commitments -- and the governance rules which reflect those commitments -- cannot be allowed to inhibit industry

restructuring efforts. In its restructuring filing before the Department, BECo states that today's NEPOOL "performs many of the functions of the ISO" and that "[T]he governance procedures of NEPOOL must evolve to ensure true independence" (BECo Filing at 85).

The expectations of customers in a restructured industry likely will not wait for the "evolution" in governance described by BECo. Any new NEPOOL requires a truly independent system operator and CPC sees no reason to maintain any governance structure under such a system. From an organizational perspective, it may be unreasonable to expect any group of decisionmakers to vote or otherwise "govern" itself out of existence. Because continuation of the NEPOOL governance structure likely will operate to delay the Department's restructuring efforts, CPC urges the Department to advocate for a truly independent NEPOOL at the FERC and before the state legislature.

Customer Choice/Access to Consumers

A competitive electricity market demands that consumers have the ability to choose among a range of suppliers and service options, as well as the ability to move freely from one provider to another. In addition, all suppliers must have equal opportunities to reach potential consumers. Without this foundation, there simply can be no real competition. The Department clearly has recognized this principle, stating that:

> While there are many ways of harnessing competitive forces to increase efficiency in the electric industry, the Department concludes that there are certain essential elements that a new industry structure must incorporate in order to realize the benefits of competition in a manner consistent with our statutory obligations. Key among these is customer choice. (1995 Restructuring Order at 13).

Unfortunately, none of the utility proposals presently before the

Department provides the necessary foundation for customer choice. The WMECo plan is most clearly deficient in its failure to offer any form of retail competition to its customers. While the other utility plans purport to offer at least some form of customer choice, they too fail to provide an adequate foundation for customer choice due to the anti-competitive nature of their proposed default services for customers who do not choose a supplier of electricity in the competitive market.

The utility proposals for default service fail to strike the necessary balance between (1) ensuring a seamless transition to competition for customers who do not choose a supplier, and (2) protecting against a market framework that accords a competitive advantage to the default service provider. Specifically, the standard offer proposals included in the BECo, MECo and EECo plans present serious obstacles to competition at both the retail and wholesale levels.

With regard to retail competition, the prohibition against re-entering default service once a customer leaves that service undoubtedly will have a chilling effect on customers' willingness to move to an alternative supplier. In order to be competitively neutral, the default service must be equally available to all customers at all times. Otherwise, what should be a customer protection becomes a marketing tool favoring the incumbent utility.

With regard to wholesale competition, the standard offer proposals create an anticompetitive and unnecessary link between the supply source for default customers and the utilities' existing generating units. The retail market share associated with the provision of default service may be significant, especially during the initial years of customer choice, and would only be augmented by the barriers to re-entry discussed above. Requiring that this market be supplied only by existing utility generating units presents a substantial barrier to real competition at the wholesale level.

In order to achieve the proper balance between providing adequate protection for consumers who do not choose a supplier of electricity and implementing a truly competitive market structure, CPC recommends the following framework for default service:

- The distribution company provides default service to all customers within its franchise territory who fail to choose a supplier of electricity.

- Customers are free to exit and re-enter default service at any time. Entry into and exit from default service involves no fees, no unreasonable notice periods, and no other barriers to choice.

- The source of electricity for default service is not mandated.

- The distribution company has the obligation to meet ISO load responsibilities for default service customers.

- The price for the default service includes both energy and capacity components. The energy component reflects the monthly average of Massachusetts or New England hourly market prices. The capacity component reflects comparable hourly market prices.

This approach provides several distinct advantages. First, customers have guaranteed access to default service at any time, regardless of their previous choice of supplier. Second, the price of the default service is capped at comparable hourly market prices. In addition, the provision of default service is not tied to a particular source of electricity, thus allowing a range of suppliers to participate in the potentially significant default service market. Finally, by requiring the distribution company to meet all ISO load responsibilities for the default service customers, this approach assures that system operational reliability is not compromised.

An alternative approach, which also meets the necessity of providing default service without conferring a competitive advantage to the provider of that service, is to allow a pool of retail service suppliers (which would include the distribution

company) to offer default service. Under this approach, the Department would establish a set of criteria which must be met by any retail service provider wanting to offer default service. Upon certification by the Department as a qualified default service provider, the retail service provider would enter a pool of default service providers. Customers who do not choose a supplier of electricity would then be allocated fairly among the members of the pool.

With regard to the process of customer education prior to, and during, the transition to competition, CPC fully supports the statement of DOER that "a comprehensive, coordinated and collaborative public information campaign is needed" (DOER Plan at 55). CPC further supports the recommendation by DOER that a collaborative process be used to identify the structure, character and pace of public information efforts. In addition, CPC recommends that the results of this collaborative process be enforceable by the Department to ensure full compliance.

Parity of Environmental Requirements

As long as different environmental requirements are imposed on similarly situated fossil-fueled generators, Massachusetts consumers will not be able to enjoy the full benefits of a restructured electricity industry. Today, older fossil units are subjected to less stringent environmental rules, while recent vintage units have been required to make the capital investment necessary to comply with the Clean Air Act Amendments of 1990 and other environmental permitting requirements. Even after Phase II of the federal Clean Air Act commences in 1999, the standards imposed on newer units will be more stringent than the standards imposed on the older units which comprise a large portion of New England's generation stock. In the interests of environmental improvement and true competition, CPC contends that there needs to be real comparability between the air emission standards that apply to all generating facilities serving Massachusetts

customers.

It is widely acknowledged that one of the societal benefits of a restructured, fully competitive electric generation market is the improved environmental quality resulting from the replacement of inefficient and polluting generating plants with newer facilities that emit relatively small amounts of polluting agents such as sulfur dioxide, nitrogen oxide and air toxics, as well as carbon dioxide. Although difficult to quantify with precision, there are significant costs to public health and the value of property associated with the operation of generating plants that compromise air quality. Today's new facilities are substantially cleaner than older power plants, and therefore make a substantial positive contribution to a cleaner environment.

Reaping the environmental benefits of electric industry restructuring requires that generating plants compete squarely with one another. The disparity between air quality standards that apply to the various fossil units can only serve to distort competition. Clearly, the risk of not addressing this disparity is that many of the older facilities serving Massachusetts customers will continue to operate without investment in meaningful emissions control technologies, and without matching the environmental improvements made by cleaner generation.

CPC notes that DOER's *Power Choice* Plan supports agreements between utilities, DEP, and other interests to achieve environmental comparability. Specifically, DOER proposes that these agreements reflect specific emissions standards for nitrogen oxide, sulfur dioxide, carbon dioxide and air toxics (DOER Plan at 31-32). CPC suggests that these standards should be viewed as a minimum level of compliance that would be necessary in such agreements in order to address the environmental comparability issue.

CPC acknowledges that requiring compliance with the air quality standards such as those proposed by DOER may require actions beyond the Department's existing jurisdiction. In fact,

actions by other state agencies and the state legislature may be required in order to implement such standards. Therefore, CPC strongly urges that the Department, as part of a comprehensive restructuring effort, work with these entities to ensure that progress is made toward achieving parity in the application of environmental requirements, thereby ensuring that the environmental benefits of a restructured electricity market are realized.

Conclusion

In opening this rulemaking proceeding, the Department has taken an important step in moving this restructuring initiative from a debate over concepts to a real plan for implementation. The proposed rules which the Department plans to issue in the next few weeks will send a signal to all stakeholders that change finally has arrived. CPC continues to believe that the transition to a restructured industry can be accomplished in a fair and expeditious manner. In this spirit, CPC appreciates the opportunity to provide these comments and looks forward to working with the Department and other parties in the coming weeks.